
HOUSE BILL 2763

State of Washington

60th Legislature

2008 Regular Session

By Representatives O'Brien, Goodman, Rodne, and Hurst; by request of Department of Corrections

Read first time 01/16/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to the drug offender sentencing alternative; and
2 reenacting and amending RCW 9.94A.660.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9.94A.660 and 2006 c 339 s 302 and 2006 c 73 s 10 are
5 each reenacted and amended to read as follows:

6 (1) An offender is eligible for the special drug offender
7 sentencing alternative if:

8 (a) The offender is convicted of a felony that is not a violent
9 offense or sex offense and the violation does not involve a sentence
10 enhancement under RCW 9.94A.533 (3) or (4);

11 (b) The offender is convicted of a felony that is not a felony
12 driving while under the influence of intoxicating liquor or any drug
13 under RCW 46.61.502(6) or felony physical control of a vehicle while
14 under the influence of intoxicating liquor or any drug under RCW
15 46.61.504(6);

16 (c) The offender has no current or prior convictions for a sex
17 offense at any time or violent offense within ten years before
18 conviction of the current offense, in this state, another state, or the
19 United States;

1 (d) For a violation of the Uniform Controlled Substances Act under
2 chapter 69.50 RCW or a criminal solicitation to commit such a violation
3 under chapter 9A.28 RCW, the offense involved only a small quantity of
4 the particular controlled substance as determined by the judge upon
5 consideration of such factors as the weight, purity, packaging, sale
6 price, and street value of the controlled substance;

7 (e) The offender has not been found by the United States attorney
8 general to be subject to a deportation detainer or order and does not
9 become subject to a deportation order during the period of the
10 sentence;

11 (f) The standard sentence range for the current offense is greater
12 than one year; and

13 (g) The offender has not received a drug offender sentencing
14 alternative more than once in the prior ten years before the current
15 offense.

16 (2) A motion for a sentence under this section may be made by the
17 court, the offender, or the state. If the sentencing court determines
18 that the offender is eligible for this alternative, the court may order
19 an examination of the offender. The examination shall, at a minimum,
20 address the following issues:

21 (a) Whether the offender suffers from drug addiction;

22 (b) Whether the addiction is such that there is a probability that
23 criminal behavior will occur in the future;

24 (c) Whether effective treatment for the offender's addiction is
25 available from a provider that has been licensed or certified by the
26 division of alcohol and substance abuse of the department of social and
27 health services; and

28 (d) Whether the offender and the community will benefit from the
29 use of the alternative.

30 (3) The examination report must contain:

31 (a) Information on the issues required to be addressed in
32 subsection (2) of this section; and

33 (b) A proposed treatment plan that must, at a minimum, contain:

34 (i) A proposed treatment provider that has been licensed or
35 certified by the division of alcohol and substance abuse of the
36 department of social and health services;

37 (ii) The recommended frequency and length of treatment, including

1 both residential chemical dependency treatment and treatment in the
2 community;

3 (iii) A proposed monitoring plan, including any requirements
4 regarding living conditions, lifestyle requirements, and monitoring by
5 family members and others; and

6 (iv) Recommended crime-related prohibitions and affirmative
7 conditions.

8 (4) After receipt of the examination report, if the court
9 determines that a sentence under this section is appropriate, the court
10 shall waive imposition of a sentence within the standard sentence range
11 and impose a sentence consisting of either a prison-based alternative
12 under subsection (5) of this section or a residential chemical
13 dependency treatment-based alternative under subsection (6) of this
14 section. The residential chemical dependency treatment-based
15 alternative is only available if the midpoint of the standard range is
16 twenty-four months or less.

17 (5) The prison-based alternative shall include:

18 (a) A period of total confinement in a state facility for one-half
19 of the midpoint of the standard sentence range or twelve months,
20 whichever is greater. During incarceration in the state facility,
21 offenders sentenced under this subsection shall undergo a comprehensive
22 substance abuse assessment and receive, within available resources,
23 treatment services appropriate for the offender. The treatment
24 services shall be designed by the division of alcohol and substance
25 abuse of the department of social and health services, in cooperation
26 with the department of corrections;

27 (b) (~~The remainder~~) One-half of the midpoint of the standard
28 range as a term of community custody which must include appropriate
29 substance abuse treatment in a program that has been approved by the
30 division of alcohol and substance abuse of the department of social and
31 health services. If the department finds that conditions have been
32 willfully violated, the offender may be reclassified to serve the
33 remaining balance of the original sentence. An offender who fails to
34 complete the program or who is administratively terminated from the
35 program shall be reclassified to serve the unexpired term of his or her
36 sentence as ordered by the sentencing court;

37 (c) Crime-related prohibitions including a condition not to use
38 illegal controlled substances;

1 (d) A requirement to submit to urinalysis or other testing to
2 monitor that status; and

3 (e) A term of community custody pursuant to RCW 9.94A.715 to be
4 imposed upon failure to complete or administrative termination from the
5 special drug offender sentencing alternative program.

6 (6) The residential chemical dependency treatment-based alternative
7 shall include:

8 (a) A term of community custody equal to one-half of the midpoint
9 of the standard sentence range or two years, whichever is greater,
10 conditioned on the offender entering and remaining in residential
11 chemical dependency treatment certified under chapter 70.96A RCW for a
12 period set by the court between three and six months. If the court
13 imposes a term of community custody, the department shall, within
14 available resources, make chemical dependency assessment and treatment
15 services available to the offender during the term of community
16 custody. The court shall impose, as conditions of community custody,
17 treatment and other conditions as proposed in the plan under subsection
18 (3)(b) of this section. The department may impose conditions and
19 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),
20 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing
21 during the period of residential chemical dependency treatment, and
22 schedule a treatment termination hearing for three months before the
23 expiration of the term of community custody;

24 (b) Before the progress hearing and treatment termination hearing,
25 the treatment provider and the department shall submit written reports
26 to the court and parties regarding the offender's compliance with
27 treatment and monitoring requirements, and recommendations regarding
28 termination from treatment. At the hearing, the court may:

29 (i) Authorize the department to terminate the offender's community
30 custody status on the expiration date determined under (a) of this
31 subsection; or

32 (ii) Continue the hearing to a date before the expiration date of
33 community custody, with or without modifying the conditions of
34 community custody; or

35 (iii) Impose a term of total confinement equal to one-half the
36 midpoint of the standard sentence range, followed by a term of
37 community custody under RCW 9.94A.715;

1 (c) If the court imposes a term of total confinement under (b)(iii)
2 of this subsection, the department shall, within available resources,
3 make chemical dependency assessment and treatment services available to
4 the offender during the terms of total confinement and community
5 custody.

6 (7) If the court imposes a sentence under this section, the court
7 may prohibit the offender from using alcohol or controlled substances
8 and may require that the monitoring for controlled substances be
9 conducted by the department or by a treatment alternatives to street
10 crime program or a comparable court or agency-referred program. The
11 offender may be required to pay thirty dollars per month while on
12 community custody to offset the cost of monitoring. In addition, the
13 court may impose any of the following conditions:

14 (a) Devote time to a specific employment or training;

15 (b) Remain within prescribed geographical boundaries and notify the
16 court or the community corrections officer before any change in the
17 offender's address or employment;

18 (c) Report as directed to a community corrections officer;

19 (d) Pay all court-ordered legal financial obligations;

20 (e) Perform community restitution work;

21 (f) Stay out of areas designated by the sentencing court;

22 (g) Such other conditions as the court may require such as
23 affirmative conditions.

24 (8)(a) The court may bring any offender sentenced under this
25 section back into court at any time on its own initiative to evaluate
26 the offender's progress in treatment or to determine if any violations
27 of the conditions of the sentence have occurred.

28 (b) If the offender is brought back to court, the court may modify
29 the terms of the community custody or impose sanctions under (c) of
30 this subsection.

31 (c) The court may order the offender to serve a term of total
32 confinement within the standard range of the offender's current offense
33 at any time during the period of community custody if the offender
34 violates the conditions of the sentence or if the offender is failing
35 to make satisfactory progress in treatment.

36 (d) An offender ordered to serve a term of total confinement under
37 (c) of this subsection shall receive credit for any time previously
38 served under this section.

1 (9) If an offender sentenced to the prison-based alternative under
2 subsection (5) of this section is found by the United States attorney
3 general to be subject to a deportation order, a hearing shall be held
4 by the department unless waived by the offender, and, if the department
5 finds that the offender is subject to a valid deportation order, the
6 department may administratively terminate the offender from the program
7 and reclassify the offender to serve the remaining balance of the
8 original sentence.

9 (10) An offender sentenced under this section shall be subject to
10 all rules relating to earned release time with respect to any period
11 served in total confinement.

12 (11) Costs of examinations and preparing treatment plans under
13 subsections (2) and (3) of this section may be paid, at the option of
14 the county, from funds provided to the county from the criminal justice
15 treatment account under RCW 70.96A.350.

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